

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6

By HON. WARREN R. DARROW

CASE NO. P1300CR20081339

JEANNE HICKS, CLERK

By: Heather Smith, Deputy Clerk

DATE: October 15, 2010

<b>FILED</b>
DATE: <u>10/15/10</u>
<u>10:11 O'Clock</u> <u>A.M.</u>
<b>JEANNE HICKS, CLERK</b>
BY: <u>HEATHER SMITH</u>
Deputy

TITLE:

STATE OF ARIZONA

(Plaintiff)

Vs.

STEVEN CARROLL DEMOCKER

(D-1)

(Defendant)

COUNSEL:

Yavapai County Attorney (e)

(For Plaintiff)

John Sears (e)

Larry Hammond & Anne Chapman (e)

OSBORN MALEDON, P.A.

(For Defendant)

HEARING ON:

Pending Motions

NATURE OF PROCEEDINGS

COURT REPORTER

Sandra K Markham

START TIME: 10:11 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney  
Jeff Paupore, Deputy County Attorney  
John Sears, Counsel for Defendant  
Larry Hammond, Counsel for Defendant  
Anne Chapman, Counsel for Defendant  
Steven Carroll Democker, Defendant in Custody  
Christopher DuPont, Counsel for Victims, Telephonically

At 10:11 a.m., Court reconvenes with both County Attorney's, Defense Counsel and the Defendant present.

Counsel notes, John Sears is not present at this time.

Court notes, this is the time to discuss legal issues that would facilitate the continuance of the trial next week.

Court has received the motion to reconsider filed by Counsel Hammond.

Parties discuss the issue of conducting hearings under seal.

Court directs, if there is a request for a matter to be sealed, either a hearing or a pleading, to submit a motion and provide the reason for the justification of sealing those things.

As for today, if Counsel believes the parties are getting into matters which have been sealed, Counsel shall then alert the Court.

With regard to motion for reconsideration, Court **DENIES** that motion.

Court would like to address, Juror #14. Court believes, based upon previous discussions with the Juror, the Juror shall be excused at this time. Court believes the Jury Commissioner can handle the excusal and direct the Juror to remain under the admonition.

Counsel for State has no objection to Juror #14 being excused.

Counsel for Defendant has no objection.

Juror #14 is excused at this time and shall remain under the admonition.

Court discusses the communication from Juror #6. Counsel has been provided copies.

Court addresses demonstrative exhibits.

Counsel for State believes demonstrative exhibits should be allowed to be provided to the Jury Panel during deliberation.

Counsel for Defendant believes demonstrative exhibits should not be provided to the Jury Panel.

Court believes some exhibits would be appropriately provided to the Jury panel during deliberations.

Court discusses jury questions. Court will indicate to the Jury Panel, questions will be accepted from the Jury Panel after the witness has completed their testimony. The Jurors will submit their questions as they have been through the bailiff. Court and Counsel will discuss the questions and relay the questions as agreed. The Jurors would not be allowed to submit more questions after the first set of questions are asked.

Counsel agree.

Court has received responses on the request to intervene. Counsel may still reply. Court would like the replies by Tuesday morning.

At this time, Counsel for State is not objecting to the request to intervene by the news organization. Counsel for Defendant objects.

Court will prepare a minute entry setting a hearing regarding the request to intervene to where the requested interveners may be present.

Court and Counsel address the communication from Juror #6.

Parties agree the Court should conduct *voir dire* with each Juror to determine whether there are any issues regarding scheduling at this time.

Both Counsel agree any discussion with the Jurors need to be sealed.

Court will address the entire panel of the admonition, ask for a show of hands as to any issue or concern and if there is a show of hands, Court will conduct individual *voir dire*.

Court indicates, Counsel may address the Jurors if a question arises during the Court's questioning.

Counsel address the document submitted by Counsel for Defendant regarding the admonition of the Jurors as to the P-Trap.

Counsel for State has some objections to portions of the document.

Court will address that a little later.

Court and Counsel address State's motion for witness to testify live via video link.

Court will further address that issue.

This is the time for the morning recess. Counsel for State shall check on the anticipated witnesses for next Tuesday.

Court takes a recess at 11:16 a.m.

At 11:41 a.m., Court reconvenes with all parties present.

Counsel for State indicates the witnesses scheduled for next Tuesday.

Court indicates, it is not going to have formal argument on witness Ray, however; has conducted some research and reviewed his previous notes.

Court and Counsel briefly discuss the witness.

A reply will be due by 9:00 a.m. on Tuesday.

Court addresses a motion regarding the 72nd supplemental disclosure.

Court believes the ruling has been made regarding the motion. Court indicates, it has reaffirmed Judge Lindberg's ruling previously.

States motion to extend time regarding the motion for the 72<sup>nd</sup> supplemental disclosure, those issues have been previously decided or are now moot and the Defense noted it never did object to the Sorenson record.

State indicates the pending motions he believes can be addressed this afternoon.

Defense indicates the pending motions she believes can be addressed this afternoon.

Court grants the motion to correct filed by Counsel for State.

Counsel Hammond would like to address the Defendant's housing conditions in the Yavapai county jail

Court addresses the issue with regards to what needs to be sealed.

Court believes what is provided during the opening statements would indicate what would be admissible to be held in open Court and not under a sealed hearing.

Court takes a recess at 12:17 p.m. All parties shall return at 2:00 p.m.

At 2:04 p.m. Court resumes with all parties present.

Counsel for State indicates, the parties are still working on possible stipulations.

Court and Counsel discuss the admonition of the Jurors regarding the P-Trap.

Court has reviewed the excerpts and the Renewed Motion to Strike the Testimony of Dan Winslow.

After some discussion, the Motion to Strike the Testimony of Dan Winslow is taken under advisement and Court will prepare a written ruling. (AE)

Court and Counsel discuss the concern regarding rebuttal witnesses.

After some discussion, the Court believes it may only be able to rule under Rule 15.7 as to each individual witness as they come up. The motion as to late disclosure is held in abeyance until each specific witness is proposed.

Parties discuss whether the issue as to Mr. Kottke needs to be sealed.

Counsel for State believes the information shall not be sealed while Counsel for Defendant believes the information shall be sealed.

Court will review the pleadings.

Court takes a break at 3:22 p.m. All parties shall return in 15 minutes.

At 3:40 p.m., Court reconvenes with all parties present.

Court indicates, this matter is not sealed at this time.

Court will issue a ruling on the pleadings.

Mr. Kottke's involvement in this case is tied to issues which have generated a great deal of litigation. The interview needs to be disclosed.

**IT IS ORDERED** and Counsel is directed to not have any further disclosure of the interview with the exception of the office staff of Counsel, Defendant to the extent it is needed and those other parties who have been receiving sealed items. Court will order the disclosure of the interview transcript by 6:00 pm today.

**IT IS ORDERED** denying the request for sanctions at this time.

Counsel for Defendant requests she be allowed to review the interview prior to finalizing the stipulation.

Court and Counsel discuss the issue of the admissibility of the anonymous email and the issue regarding gruesome photos. That issue will be taken up at a later time.

Court and Counsel discuss the issue regarding Defendant's current housing arrangement. Defendant is currently in administrative segregation in the jail.

Counsel for Defendant is requesting the Court order Counsel for State to produce all records with respect to the incident as to why the Defendant is in lockdown.

Counsel for State requests a hearing be set and a motion be filed prior to the Court ordering him to produce records.

Counsel for State believes the Defendant's right to Counsel and contact with Counsel has not been taken away, however; is limited at this time.

Court indicates, if the search warrant has been served on the Defendant, Counsel for Defendant shall have a copy of the Search Warrant. Counsel for State shall provide the search warrant to Counsel for Defendant.

Counsel for Defendant further requests a copy of the interview of the Defendant and the letter seized from the Defendant that may have something to do with the reason for Defendant's segregation.

Court orders Counsel for State to review all the items and to provide Counsel for Defendant anything which relates to this case.

Counsel for State shall speak with the Jail Commander as to the Defendant's rights in segregation.

The items to be submitted to Counsel for Defendant shall be submitted by Monday at 4:00 p.m. so that any issue can be discussed on Tuesday.

Counsel for State will provide Counsel for Defendant with the search warrant, affidavit and the interrogation by Monday at 4:00 p.m.

Counsel for State informs the Court, Mr. Kottke's interview has been emailed to Counsel for Defendant, John Napper and Christopher Dupont with the directive that it be sealed.

Court specifies, it is restricted at this time, in terms of dissemination, to the Defense team, people who work in their offices, Defendant as determined appropriate by Counsel, to John Napper and Christopher Dupont and not to be provided to anyone further without further order of the Court. Court further orders, Tom Kelly, Counsel for Mr. Kottke, shall receive a copy of today's minute entry only.

Court and Counsel briefly discuss the e-mail to which was posted in the local paper.

Court is informed by Counsel for State, a ruling from a Higher Court just came in.

Court will issue a ruling as to those matters currently under advisement.

Court directs Counsel to be present at 8:15 a.m. on Tuesday.

Court adjourns at 4:25 p.m.

cc: Dean Trebesch (Contract Administrator) (PD) (e)  
Christopher DuPont, Trautman DuPont PLC,  
Counsel for Victims Charlotte and Katherine DeMocker  
YCSO – Detention Records (e)  
Victim Services (e)  
John Napper, Counsel for Renee Girard (e)  
Division 6  
Tom Kelly (e) (courtesy)